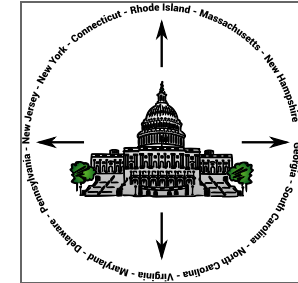## SOVEREIGNTY

- Systems of government are defined in terms of *sovereignty*:
    - Fundamental governmental authority.
    - The right to govern a particular people or territory.
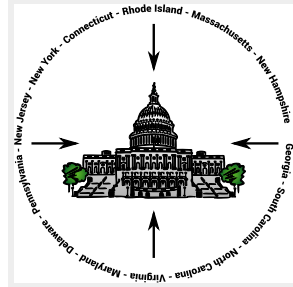
UNITARY STATES

- In a **unitary state** (or system) only the *national* government is sovereign.
- Country may be divided into provinces, counties, etc. but they are only *administrative* subdivisions.

- Examples include:
    - France
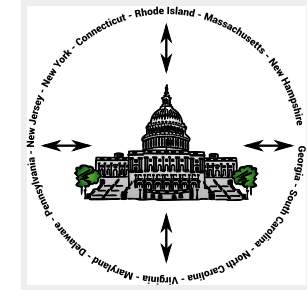   - Israel
    - Japan
    - New Zealand

CONFEDERATIONS

- A **confederation** (or *confederal system*) is a government formed by sovereign states working together for common purposes.

- Central government's powers are limited to those granted by the states.

- Examples include:
    - U.S. under the Articles of Confederation.
    - Switzerland (until 1848).
    - The European Union (to an extent…)

FEDERAL STATES

- A **federal state** (or federation) *shares* sovereignty between the national and subnational governments.

- The nation and its units (states, provinces, etc.) may have both overlapping and non-overlapping areas of responsibility.

- Examples include:
    - The United States (since 1789)
    - Brazil
    - Canada
    - Germany

FEDERALISM IN THE UNITED STATES

- Many *national powers* (sometimes called *delegated powers*), including some of the **enumerated powers** of Congress.

- **Concurrent powers** are shared between the state and federal governments.

- **Reserved powers** are powers executed by the states alone; however, other powers are *denied* to the states.

NATIONAL (DELEGATED) POWERS

Powers that can be exercised *solely* by the national government:

- Conduct foreign relations, including issuing declarations of war.

- Coin money and issue paper currency.

- Regulate *interstate commerce*.

- Regulate foreign commerce, including imposing *tariffs* and *trade sanctions*.

- Provide for national defense.
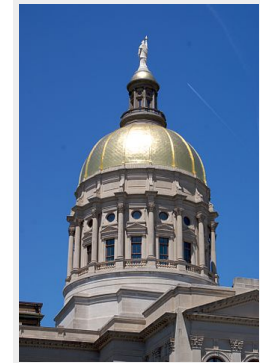
CONCURRENT (SHARED) POWERS

Powers that can be exercised by *both* state and national governments:

- Levy taxes; spend and borrow money.

- Establish courts.

- Charter corporations and banks.

- Make and enforce laws.

- *Eminent domain*: take private property for public use, subject to compensation.

RESERVED POWERS OF THE STATES

Powers that only the states may exercise:

- Regulate time, place, and manner of elections.

- Regulate *intrastate commerce* (commerce *within* the state).

- Organize *political subdivisions* like counties, cities, and school districts.

- Exercise **police power** over public health, safety, welfare, and morality.

- Ratify amendments to the U.S. Constitution.

MAJOR LIMITATIONS ON STATE POWER

States may not...

- issue currency, coin money, or declare anything other than gold or silver *legal tender*.

- levy tariffs on imports or exports without Congress' approval.

- enter into treaties or alliances with other countries.

- enter into agreements with other states (known as **interstate compacts**) without Congress' consent.

- pass *bills of attainder*, *ex post facto* laws, or abridge contracts.

OBLIGATIONS OF THE STATES

States also have certain obligations to the other states, subject to exceptions:

- Must give **full faith and credit** to the *public acts* of other states, such as court decisions and legal contracts.

- Must respect the **equal privileges and immunities** of citizens of other states; cannot favor residents over non-residents in their public policy.

- **Extradition** of those suspected or convicted of crimes back to the state where they are wanted.

FEDERALISM AND THE COURTS

- Supreme Court decided it had authority to mediate issues of dual sovereignty in *McCulloch v. Maryland* (1819):
    - *Necessary and Proper Clause* (or *Elastic Clause*): gives Congress authority to "make all laws which shall be necessary and proper to carrying into execution" the enumerated powers: additional powers known as *implied powers*.
    - *Supremacy Clause*: federal constitution and laws "supreme law of the land."
- Combined effect: Congress could go well beyond its enumerated powers, and states had to defer to expansion of federal power.

THE COMMERCE POWER

- Congress can "regulate commerce… among the several states."
- Applied to state efforts to control trade between states in *Gibbons v. Ogden* (1824).
- During the New Deal era, Supreme Court allowed Congress to regulate almost any action that might affect the national economy: *NLRB v. Jones & Laughlin Steel* (1937); *Wickard v. Filburn* (1942).
- More recent example: medical marijuana case (*Gonzales v. Raich*, 2005).

THE SPENDING POWER

- Congress has the power to spend money providing for the "general welfare."

- When Congress gives money to states and local governments, it often requires states to do things in return.

- Examples:
  - Raising the drinking age to 21 (*South Dakota v. Dole*, 1987)
  - Seatbelt laws
  - Motorcycle helmet laws

LIMITS ON FEDERAL POWER?

- The Supreme Court has occasionally said the federal government has gone too far:
  - In the 1990s, the Supreme Court struck down parts of several laws on federalism grounds.
  - In 2012, the Court somewhat limited the spending power in *National Federation of Independent Business v. Sebelius* (PPACA case): states could not lose **all** federal funds for existing Medicaid recipients if they refused to expand the program.

STATE POWER AND NULLIFICATION

- Two constitutional amendments designed to protect state governments' authority:
  - Tenth Amendment (states and the people retain powers not delegated to the federal government).
  - Eleventh Amendment (*sovereign immunity*).
- After *McCulloch*, some states argued in favor of the **nullification doctrine**: that states could refuse to follow federal laws they believed were unconstitutional.
- Reflects older *compact theory* of federal–state relations.

DUAL AND COOPERATIVE FEDERALISM

- Traditionally, relationship between state and national governments was understood as *dual federalism*: each government did its own thing, with little overlap in responsibilities.
- The expansion of national government power during FDR's presidency produced a new arrangement: *cooperative federalism* (sometimes called *marble cake federalism*).
- Rather than two separate "spheres" of power—the dual federalism model—powers of the state and national governments overlap. Reflects the *nationalist theory* of federal-state relations.

COOPERATIVE FEDERALISM IN PRACTICE

- Political scientists who defined the term believed there would be genuine cooperation between state and national governments to design effective programs.

- Instead, however, many of the new national programs gave states major administrative responsibilities but little input.

USING THE SPENDING POWER

- Congress has several options for getting the states to do things it is unable or unwilling for the federal government to do:

  - **Categorical grant** programs.

  - **Block grant** programs.

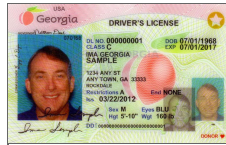 - Using **unfunded mandates**.

CATEGORICAL GRANTS

- Federal grants to a state or local government that include specific rules and regulations for the use of funds.
- Examples:
  - SNAP ("Food Stamps").
  - Head Start.
  - Medicaid.
  - No Child Left Behind.

DEVOLUTION AND BLOCK GRANTS

- States and some national politicians (former governors like Nixon, Carter, and Reagan) pushed for returning more powers to the states: *devolution*.
- **Block grants:** federal grants with fewer "strings" attached.
- Examples:
  - "Community Development Block Grants"
  - Temporary Assistance to Needy Families (TANF).

UNFUNDED MANDATES

- Congress requires states to do things without providing the needed funding.
    - **No Child Left Behind**: required states to increase testing of students, but didn't pay to develop the needed tests.
    - **REAL ID Act**: required states to make driver's licenses/state IDs more secure, but states had to spend millions changing issuing processes.

IS DEVOLUTION DEAD?

- Although states are "laboratories of democracy," and national politicians often use rhetoric supporting devolution, they remain reluctant to give up control.
- Politicians often are responding to public demands to "do something" about problems, even when state and local governments may be better equipped to solve them.